Nos. 83-737 and 83-738

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1983

THE PEOPLE OF THE STATE OF CALIFORNIA and THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, Appellants,

v.

UNITED STATES OF AMERICA and WESTERN ELECTRIC COMPANY AND AMERICAN TELEPHONE and TELEGRAPH COMPANY, Appellees.

NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE, Appellant,

v.

UNITED STATES OF AMERICA and WESTERN ELECTRIC COMPANY AND AMERICAN TELEPHONE and TELEGRAPH COMPANY, Appellees.

On Appeal From the United States District Court for the District of Columbia

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AT&T'S MOTION TO EXPEDITE THESE APPEALS

Appellees Western Electric Company and American Telephone and Telegraph Company ("AT&T"), by their attorneys, hereby move for expedition of these appeals. These two appeals represent the final legal challenges to the structural reorganization of the Bell System which was ordered in the District Court's Modification of Final Judgment ("MFJ") on August 24, 1982, and which will occur in less than six weeks, on January 1, 1984. Seventeen appeals were filed from the entry of MFJ, taken directly to this Court under the Antitrust Expediting Act, 15 U.S.C. §29(b), and decided by this Court on an expedited basis last term. Maryland v.

United States, 103 S. Ct. 1240 (Feb. 28, 1983). The instant appeals, in turn, are challenges to the District Court's decision approving AT&T's and the Justice Department's plans for implementating the MFJ, and these appeals, too, have been certified directly to this Court. The District Court found that it is a matter of profound "public importance in the administration of justice" that the final disposition of these challenges occur before January 1, 1984. J.A. 353; see November 10, 1982 Order, p. 3. Accordingly, AT&T moves for the consideration of its motion for summary affirmance at the next scheduled conference of the Court and for a decision before January 1, 1984. In support of this motion, AT&T states as follows:

1. The MFJ achieves the Justice Department's antitrust objectives in over three decades of litigation with the Bell System. It orders the divestiture of the Bell System's local exchange functions, which will represent about $100 billion of its approximately $150 billion in assets. The MFJ is to be implemented on January 1, 1984, by dividing the present Bell System into nine separately owned entities (AT&T, seven regional companies, and the region-owned Central Staff Organization). It requires a separation of assets and personnel of each of the major components of the Bell System: AT&T, the 22 Bell Operating Companies ("BOCs"), Western Electric Company, and Bell Telephone Laboratories.

2. The planning to implement the MFJ has been an enormous and unprecedented undertaking. It has been accomplished while the Bell System has continued to provide telecommunications services that are vital to the national economy and the national defense. This split must be completed as of January 1, 1984, and as more fully explained below, if any and all legal challenges to this reorganization are not resolved before that date, this massive effort and important national interests will be jeopardized.

3. When seventeen intervenors appealed the decision entering the MFJ, the District Court found that the existence of legal challenges to the reorganization, no matter how insubstantial, created uncertainty that imperiled vital national interests. It concluded that any significant delays in the final resolution of this case would disrupt the Bell System companies "own operations," "inhibit investment and other business decisions necessary to the maintenance and improvement of the telecommunications network," "jeopardize the ability of the Bell System's components to raise the outside capital needed for the modernization and expansion of [the] network," and "adversely affect the entire telecommunications industry and thus, indirectly, the nation as a whole." J.A. 148-149; see also April 8, 1982 Order, pp. 5-6; November 10, 1982 Order. The District Court specifically found that if the challenges were not finally resolved before January 1, 1984, it would have even more severe consequences. November 10, 1982 Order, p. 3. Accordingly, the appeals were certified directly to this

Court under the Antitrust Expediting Act, id., and this Court decided the appeals on an expedited basis during the 1982 term. See Maryland v. United States, 103 S. Ct. 1240 (Feb. 28, 1982).

4. During the fifteen months since the MFJ was entered, the parties, the District Court, and more than 50 intervenors have invested great resources in assuring that it may be implemented, as scheduled, on January 1, 1984. First, the BOCs, in consultation with the Justice Department, divided the Nation into the exchange areas (" LATAs") and associated nonBell territories that are a precondition to the division of assets. After extensive proceedings that addressed both the geographic boundaries and a host of related issues, the LATAs were approved, with minor modifications. Second, AT&T, in consultation with the BOCs and the Justice Department, prepared the 471-page Plan of Reorganization ("Plan") that is at issue in these appeals and submitted it to the District Court on December 16, 1982 -- over a year before the scheduled reorganization. The Plan was then subject to a separate proceeding that included the filing of sworn affidavits by the designated Chief Executive Officers of the seven to-be-divested regional holding companies on the adequacy of the Plan, the filing of extensive public comments objecting to specific provisions, careful review of the public comments and formal statements of approval and disapproval by the Justice Department, a hearing featuring legal arguments and live testimony by three of the designated regional Chief Executive Officers, and ultimate review by the District Court.

5. In recognition of the overwhelming need to put a timely end to any and all uncertainty over how the MFJ was to be implemented, AT&T took extraordinary steps to avoid any continuing controversies over its plan. It amended the Plan on April 7, 1983, to eliminate Pacific Telephone's objections to its capital structure and to assure that Pacific will be divested in a more favorable financial condition than the MFJ requires. AT&T further agreed to each of the some thirty-five amendments that the Justice Department insisted be made to the Plan. Finally, AT&T acquiesced in each of the six additional major modifications that the District Court required. J.A. 328-330. This was despite the fact that many of the amendments had severe adverse consequences for AT&T and, in its view, were not required by the MFJ: e.g. the District Court's holding that the MFJ denied AT&T any domestic rights to the "Bell" name and trademark. J.A. 329.

6. When, on August 10, 1983, the State of California and the California Public Utilities Commission ("California") appealed from the District Court's decision approving AT&T's plan, as amended, the Justice Department urged, and the District Court found, that the same basic considerations that had led to the expedition of the challenges to the entry of the MFJ last year now dictated the "immediate consideration by the Supreme Court" of any and all appeals from the approval of the plan for the MFJ's implementation. J.A. 354. The District Court reiterated its earlier findings that the uncertainty that challenges to the reorganization

create has "serious adverse consequences" for "millions of [Bell System] employees and shareholders, the Nation's telephone subscribers, AT&T's competitors, the telecommunications industry in general, and the responsibilities of federal and state regulatory bodies." J.A. 353. The District Court found that the pendency of these appeals would have these adverse consequences despite the fact that "it is not likely that the appeals will present questions of legal significance." J.A. 352. Indeed, the Department argued and the District Court found that expedition is even more necessary now than it was when the MFJ was entered because the "January 1 deadline" was "four months rather than almost fourteen months away" and the adverse social and economic consequences of uncertainty "would be multiplied if the divestiture proceeded on January 1, 1984, while the plan of reorganization was still under challenge in the courts." J.A. 353. Thus, the District Court certified these appeals to this Court to permit it to eliminate these threats to the national economy in the only way possible: decision of these appeals before January 1, 1984.

7. In their jurisdictional statements filed November 3, 1983, California and the New York State Department of Public Service ("New York") each implicitly recognize the paramount importance of expedition in this case. However, they argue that the issues that they have raised are discrete and unrelated to the implementation of the MFJ and that there can be no adverse consequences to the public if divestiture proceeds on January 1, 1984, without a prior

final resolution of their claims. This is wrong. The pendency of these appeals would then produce a continuation of the very "state of limbo" that the District Court, the Justice Department, and this Court's decision of last February all sought to prevent.

8. New York and California are simply incorrect in asserting that the assets, liabilities and books of account that are relevant to their appeals can be reassigned between the BOCs and AT&T after the January 1, 1984, divestiture without imperiling the reorganization and the private and public interests that are at stake.

A. For example, California objects to the assignment to the BOCs of the "complex inside wire" -- which is the wire that runs through floors and walls of skyscrapers and other buildings and that performs local transmission functions for business telephone systems such as Private Branch Exchanges ("PBXs"). A post-divestiture reassignment of this physical asset from the BOCs to AT&T would severely disrupt each of the companies' marketing and financial operations, customer relationships, and employee morale during the critical period in which the separate companies must establish separate and positive market presences.

First, the BOCs have now made or are making arrangements to recover the costs associated with the investment in complex inside wiring from the businesses who use the wire or from ratepayers as a whole. To reassign

this physical asset to AT&T after divestiture would alter the BOCs' revenue requirements, disrupt their rate schedules, and require fundamental changes in their marketing efforts. It would further require reassignments of some personnel who maintain or service this wiring from the BOCs to AT&T, thereby disrupting operations, working relationships, and employee morale within each BOC, and within AT&T as well.

Similarly, AT&T's operations would be profoundly disrupted by a post-divestiture decision to make it the owner of complex inside wiring. In addition to the effects on its employees, AT&T would be required to revamp its prices and marketing and maintenance operations to attempt to recover all or part of the Bell System's shareholders' investment in this physical asset. AT&T would thus find itself in the difficult position of having to develop charges to recover the costs of inside wiring that is used with the PBXs installed by its direct competitors in the CPE market, such as Rolm and Northern Telecom -- which could lead to the very type of post-divestiture controversies that the MFJ was intended to end. The adverse effects on the BOCs and AT&T would be exacerbated because the new arrangements would all have to be established on an emergency basis after divestiture.

B. Similarly, if California were to prevail after divestiture on its claim that Pacific's average cost of debt must be reduced, or the debt costs of all the BOCs' equalized, a mechanism would have to be developed to consolidate the

financial operations of the eight separately owned companies that will result from the reorganization, either by pooling all the outstanding debt issues of Bell System companies or by requiring ongoing payments among all companies. In either case, the companies would have to agree upon arrangements for the joint management of their debt portfolios, including such day-to-day financial decisions as whether and when to call debt issues before their maturity, whether to refinance these issues and, if so, with what new debt instruments. The necessary financial integration would exceed that under the Bell System's current operations, would divert critical managerial and operational resources from the tasks of establishing normal post-divestiture business operations, and would inject substantial uncertainty into the companies' finances, disrupting financial planning and investor decision-making at precisely the time it is most critical for the companies to establish investor confidence and unimpaired access to the capital markets.

C. More fundamentally, the provisions of the Plan are inextricably interrelated, not discrete as California and New York imply. A change in one part of the Plan can thus require changes in other parts of the Plan. For example, if the investment in complex inside wiring (or in the accounting entries for "station handling" in Account 232 that both California and New York raise) were reassigned to AT&T after divestiture, other changes would be required. The reassignment of this investment will obviously remove investment from the BOCs' books. California and New York could thus be expected to argue that AT&T would be required

to assume more of the BOCs' debt to assure that each had previously been divested with the MFJ-prescribed debt ratios -- as New York implicitly acknowledges in the last sentence of its jurisdictional statement (p. 8). But AT&T could contend that no additional debt need be assumed from some or all of the twenty-two BOCs, most of whom are being divested with lower than the MFJ-prescribed debt ratios, and, with or without owning the Account 232 investment, may still have been divested with the "approximately" 45% debt ratios (or 50% ratio in the case of Pacific) that Section VIII(H) of the MFJ requires. Similarly, if the Court decided for California on its claim that Pacific should have been divested with an average cost of debt of 9.2%, AT&T could contend on remand that no additional debt nonetheless need be assumed because AT&T has the right under the MFJ to increase Pacific's debt ratio from its present 46.5% to 50% -- which would more than offset the reduction in Pacific's annual total debt expense resulting from the decrease in the average cost of its debt.

Beyond the specific provisions of the Plan involved in this case, if significant changes in the Plan were ordered, the parties could reconsider other provisions of the Plan or of the MFJ, in order to preserve the balance achieved by the existing Plan. They would be free even to agree to modifications of the MFJ that would conform it to the construction that the parties and the District Court have given it in this case. In all events, it is certain there would be protracted proceedings in the District Court, a new round of objections and further appeals -- all of

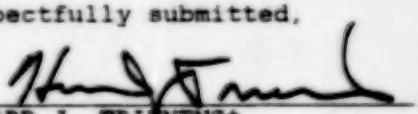
which would prolong the very interrelationship among the companies and the same crippling uncertainty that the entry and affirmance of the MFJ was supposed to end.

D. These considerations vividly demonstrate that the uncertainty that these appeals create will threaten national interests if the appeals are not finally resolved by January 1, 1984. Business and financial planning will be impeded for the Bell System companies, their competitors, and all telephone subscribers. The ensuing financial uncertainty will not only impair the trading of the stock of the to-be-established companies -- trading which the SEC permitted to begin on November 21, 1983 -- but, far more importantly, will seriously impair the ability of each of these companies to raise funds in capital markets during what will probably be the single most critical period in their future corporate existences: immediately after divestiture. These adverse consequences would be compounded by the possibility that marketing and operational arrangements could be disrupted during this critical period by post-divestiture decisions of these appeals.

9. The District Court and this Court have thus far taken all the necessary steps to assure that the uncertainty that the challenges to the reorganization create does not impair vital national industries and interests and therefore to prove that the federal judiciary can manage large antitrust cases. The only way to put a timely end to the potentially crippling uncertainty created by the two

final legal challenges to the reorganization is for this Court to decide these appeals now, before January 1, 1984.

Respectfully submitted,



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